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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.985 OF 2004

Dattu Bala Yelwande, since deceased through his LRs — Appellants

versus

Baban Bhaguji Yelwande & others — Respondents

Mr.R.D.Soni with Mr.V.D.Raut for appellants.

Mr.G.S.Godbole for respondent no.1.

Mr.N.B.Shah for respondents 2, 5 to 9.

CORAM : DR.D.Y.CHANDRACHUD, J.

DATE : 06TH JULY 2007

PC :

1. This appeal is by the heirs of the original fifth defendant. The issue which is raised in the appeal is the correctness of the finding which has been recorded by the Appellate Court that there was a severance in the status of a Hindu Undivided Family as between three sons of the ancestor Bala namely Bhaguji, Raju and Dattu.

2. Now, a perusal of the pleadings contained in paragraph 2 of the plaint would reveal that there

was a specific averment to the effect that the fifth defendant Dattu, Hirabai, the father of the sixth defendant Ranu and Bhaguji had effected a partition as between themselves. Accordingly, the case was set up that the 1/3rd share of each of the three brothers was reflected in the rights register and that each of the three brothers was separately cultivating the lands falling to their shares which had been duly demarcated. However, it was stated that the partition had not been reflected in the revenue records. The predecessor of the appellant herein filed a written statement and in paragraph 2 of the written statement he specifically admitted that in pursuance of a family arrangement the plaintiffs and the defendants were separately cultivating the lands. He, however, also stated that the revenue records had not been duly mutated. In paragraph 4 of the written statement the predecessor-in-interest of the appellant admitted the claim of the original plaintiff and submitted that he had no objection to a decree being passed in terms thereof.

3. The written statement of the predecessor-in-interest of the appellant, therefore, clearly reveals an acceptance of the

pleading to the effect that there was a partition in the larger joint family consisting of the three sons of Bala in pursuance of which the three branches were in possession and cultivation of the lands which fell to their respective shares each in the proportion of one third.

4. The contention of the appellant before the Appellate Court was that since there was no partition by metes and bounds between the three sons of Bala, the one third share of Hirabai (the sixth defendant being the daughter of Ranu) which was purchased by the defendant, should remain joint family property in which the fifth defendant would be entitled to a one half share. The Appellate Court has correctly rejected the submission by holding that neither the fifth defendant nor his legal representative, the appellant herein, stepped into the witness box and adduced any evidence in support of the case that there was no partition at all between the members of the Hindu Undivided Family consisting of three sons of Bala. There was evidence on the contrary of the factum of partition.

5. On behalf of the appellant, however, it has been submitted that the plaintiff in the course

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of his cross examination admitted that there was no distribution of the property by metes and bounds. The position in law, in my view, is explicitly clear. As the Supreme Court held in Kalyani Vs. Narayan (AIR-1980-SC-1173), a partition in one sense is a severance of joint status and a coparcener is entitled to claim it as a matter of his individual volition. The Supreme Court held that in that narrow sense all that is necessary to constitute a partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty. An expression of such unequivocal intention to separate brings about a severance in the joint family status and the partition need not be followed by a division of properties by metes and bounds. In other words, a disruption in the joint family status follows by a definite indication to separate although it is not immediately followed by a de-facto or actual division of the property of the joint family.

6. Having regard to the settled position of law, the admission of the plaintiff that an actual division of the property by metes and bound had

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not occurred will not detract from the severance in the joint family status that took place upon the family arrangement. The family arrangement was admitted by the appellant in his written statement and even according to the appellant the only step which remained to be carried out was the mutation of the properties to the respective branches in the revenue records. The mutation of the revenue records does not impinge upon the severance of joint family status. Secondly, the predecessor of the appellant has filed a written statement accepting the plea of the plaintiff. He neither stepped into the witness box, nor for that matter did the appellants. In these circumstances, the appellants cannot be heard in this proceeding to complain. The Second Appeal does not raise any substantial question of law and is accordingly dismissed.

7. In view of dismissal of the Second Appeal, Civil Application No. 277 of 2004 does not survive and stands dismissed as such.

(DR.D.Y.CHANDRACHUD, J.)